

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JEREMY LEVIN AND DR. LUCILLE LEVIN, :
: :
Plaintiffs, : Case No. 09-Civ-5900 (RPP)
v. :
: :
BANK OF NEW YORK, *et al.*, :
: :
Defendants. :
-----x
THE BANK OF NEW YORK MELLON, *et al.* :
: :
Third-Party Plaintiffs, :
: :
v. :
: :
ESTATE OF MICHAEL HEISER, *et al.*, :
: :
Third-Party Defendants. :
-----x

**LIMITED RESPONSE OF THE ESTATE OF MICHAEL HEISER, ET AL.
TO PLAINTIFFS' MOTION FOR A STAY OF THE COURT'S
JANUARY 28, 2011 ORDER PENDING APPEAL**

The Estate of Michael Heiser, *et al.* (the "Heisers") by their undersigned counsel, hereby submit the following limited response to the Motion of Jeremy Levin and Dr. Lucille Levin (collectively, the "Levins") for a stay of the Court's January 28, 2011 Order Pending Appeal (the "Motion"). The Heisers do not take a position with respect to the Levins' request for a stay of the Court's January 28, 2011 Order (the "Order"), provided that the stay is limited in scope to the relief requested in the Motion, *i.e.*, a stay of the portion of the Order ordering the immediate payment of the Phase 1 Assets (as defined in the Order) held by JPMorgan Chase Bank, N.A. ("JPMorgan") and Citibank, N.A. ("Citibank") to the Greenbaum and Acosta Judgment Creditors.

However, the Heisers do object to the extent that the Levins seek a stay of the entire proceeding. The portions of the January 28, 2011 Opinion addressing the Heisers' Motion for Summary Judgment and the Heisers' claims to various assets in these proceedings, exclusive of any claim to the Phase One Assets¹ held at Citibank and JPMorgan which the Court ordered to be turned over to the Greenbaum and Acosta Judgment Creditors, are not final or properly appealable at this time. As such, any stay granted in favor of the Levins should not affect the Heisers and their claims in this case. To the extent that the Levins seek to stay the Heisers from proceeding in this case on their claims, the Heisers object due to the fact that the Heisers rights and claims are not final and should not be subject to an immediate appeal or a stay.

Accordingly, any stay should be limited to the implementation of the Order as it relates to the Phase 1 Assets held by JPMorgan and Citibank.

¹ The term "Phase One Assets" has the meaning ascribed to it in the Order.
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Dated: New York, New York
February 24, 2011

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CERTIFICATE OF SERVICE
THE BANK OF NEW YORK MELLON, *et al.* :
:
Third-Party Plaintiffs, :
:
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ESTATE OF MICHAEL HEISER, *et al.*, :
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Third-Party Defendants. :
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CERTIFICATE OF SERVICE

I, David B. Misler, Esq., an attorney admitted to practice before this Court, pro hac vice, under penalty of perjury, certify that on the 24th day of February, 2011, true and correct copies of the following documents were provided to the persons listed in the attached Service List, by the Court's CM/ECF electronic filing notification:

- (1) Limited Response of the Estate of Michael Heiser, *et al.* to the Plaintiffs' Motion for a stay of the Court's January 28, 2011 Order Pending Appeal.

Dated: Baltimore, Maryland
February 24, 2011

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